

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

KATHLEEN B.,

Claimant,

vs.

REDWOOD COAST REGIONAL
CENTER,

Service Agency.

OAH No. 2006020599

DECISION

This matter was heard before Michael C. Cohn, Administrative Law Judge, State of California, Office of Administrative Hearings, in Eureka, California, on March 30, 2006.

Claimant represented herself.

The service agency was represented by Brian Nash, Consumer Services Manager.

The record was held open to allow claimant to submit additional medical records. On April 4, 2006, claimant submitted an August 9, 2005 letter from neurologist Kurt M. Osborn, M.D., referring claimant to the Psychological Assessment Clinic at the University of California, San Francisco, and the resulting psychological assessment report, which was dated October 21, 2005, and was signed by examiners Rachel Loewy, Ph.D., and Karen Froming, Ph.D. These two documents were received in evidence as Exhibits B and C, respectively. The matter was deemed submitted for decision on April 4, 2006.

ISSUE

The issue is whether claimant is eligible for services under the Lanterman Act because of a condition that requires treatment similar to that required for individuals with mental retardation.

FACTUAL FINDINGS

1. Claimant is 45 years old. She believes she has a condition that requires treatment similar to that provided to mentally retarded individuals. She says that she is “falling apart” in life and that she is “stumbling at every turn.” The only services she seeks from the service agency are “case management” and advocacy services. Claimant states that she needs someone to help her get necessary neurological testing that will enable her to understand her strengths and weaknesses. She has been unable to get help of this nature from other agencies, including Humboldt County Mental Health.

2. Claimant lives independently, renting a room in Eureka. She has not worked since 1984, when she began receiving Social Security disability income based on diagnoses of organic brain dysfunction, depression, and personality disorder.

3. Claimant was born and raised in Southern California. Her mother drank during pregnancy and claimant’s brain dysfunction is related to fetal alcohol syndrome. Claimant describes herself as an “adequate” student who received mostly B’s and C’s throughout school. In 1978, when claimant was nearly 18 years old, her mother sought to receive services for her through the San Gabriel Valley Regional Center because claimant was having difficulties in math and with reading comprehension, and because she had episodes of depression and anxiety. An initial psychological evaluation resulted in mental health diagnoses. It appears cognitive testing was first done in January 1979. On the Wechsler Adult Intelligence Scale claimant achieved a verbal IQ of 96, a performance IQ of 82, and a full scale IQ of 90. She was diagnosed with “minimal brain dysfunction with associated anxiety and depression.” She was found not to be eligible for regional center services.

4. In May 1985, neurologist Clark D. Espy, M.D., evaluated claimant. In his review of the medical records, Dr. Espy noted that after the January 1979 testing described above, claimant had again undergone IQ testing in 1981, resulting in a score of 105. Another evaluation in 1984 produced a full scale IQ of 91, raised the possibility of schizophrenia, and recommended a psychiatric evaluation. Following his evaluation, Dr. Espy’s impression was of “probably mild congenital learning disability . . . aggravated by an underlying schizoid personality disorder, depression and poor self image.” He noted, “The patient seems to have a mild learning disability which for the most part she has been able to overcome in the school setting.”

5. Claimant underwent a psychiatric evaluation in December 1996. Describing claimant’s then-current level of functioning, Oscar Valdes, M.D., wrote: “The patient lives in a one bedroom apartment that is subsidized by the state. She keeps her doctor’s appointments on her own and is able to use public transportation. . . . She washes her own clothes and does her own household chores. . . . She bathes and grooms herself.” Dr. Valdes’ diagnoses were of schizoaffective disorder and learning disorder not otherwise specified. He deferred to another specialist an opinion concerning the nature and extent of claimant’s learning disorder.

6. According to her own reports, claimant graduated from high school and then attended Truckee Meadows Community College, Pasadena City College and Citrus College. It is unclear whether claimant received a college degree; she told Dr. Valdes in 1996 that she had not received a degree, but she told two psychologists who examined her in 2005 that she had received an A.S. degree in business and an A.A. degree in sociology from Citrus College. After moving to Humboldt County in 2002, claimant began attending College of the Redwoods with the goal of transferring to Humboldt State University to pursue a bachelor's degree in sociology. According to her current treating neurologist, Kurt M. Osborn, M.D., because she has difficulty in math and is unable to complete a required math course at College of the Redwoods, claimant has offered to take extra philosophy courses as a substitute.

7. Dr. Osborn first examined claimant in March 2005. His impressions were of a "learning disorder . . . with emphasis on dyscalculia" due to fetal alcohol syndrome, and a history of dysthymic disorder. He recommended that she undergo an MRI because of "some controversy about the status of [her] current cognitive abilities." The MRI scan done the following month showed areas of brain atrophy that Dr. Osborn concluded were consistent with fetal alcohol syndrome. Thus, Dr. Osborn concluded, the MRI "gave an anatomic correlate to [claimant's] learning disorder and, particularly, those difficulties with higher cognitive function that she has, such as dyscalculia."

8. In August 2005, Dr. Osborn referred claimant to the Psychological Assessment Clinic at the University of California, San Francisco. There, claimant was interviewed by psychologists Rachel Loewy, Ph.D., and Karen Froming, Ph.D. Although it had been planned as part of the assessment, no psychological testing was done; claimant had booked her return flight to Eureka at a time that did not leave sufficient time for the tests. Drs. Loewy and Froming made Axis I diagnoses of cyclothymic disorder and "rule out mathematics disorder," and an Axis II diagnosis of personality disorder not otherwise specified. They recommended that claimant might benefit from prescription of a mood stabilizer, that she undertake long-term psychotherapy, that she participate in a behavior therapy group, and that she "be assigned a case manager to help her with her financial, housing and educational needs" and "to act as her advocate and negotiate for her in situations where [she] is likely to act in self-defeating ways."

LEGAL CONCLUSIONS

1. Under the Lanterman Developmental Disabilities Services Act,¹ the State of California accepts responsibility for persons with developmental disabilities.² As defined in the act, a developmental disability is a disability that originates before age 18, that continues

¹ Welfare and Institutions Code section 4500 et seq.

² Welfare and Institutions Code section 4501.

or is expected to continue indefinitely, that constitutes a substantial disability for the individual, and that is attributable to mental retardation, cerebral palsy, epilepsy, autism or what is commonly known as the “fifth category:” “disabling conditions found to be closely related to mental retardation or to require treatment similar to that required for mentally retarded individuals.”³

2. One of the Lanterman Act’s implementing regulations provides that a learning disability cannot constitute a developmental disability. A learning disability is defined as “a condition which manifests as a significant discrepancy between estimated cognitive potential and actual level of educational performance and which is not a result of generalized mental retardation, educational or psycho-social deprivation, psychiatric disorder, or sensory loss.”⁴

3. The sole issue in this case is claimant’s eligibility under the fifth category. The court in *Mason v. Office of Administrative Hearings (Inland Regional Center)*, held that in order to be qualifying, “[t]he fifth category condition must be very similar to mental retardation, with many of the same, or close to the same, factors required in classifying a person as mentally retarded.”⁵

4. Mental retardation is characterized by significantly subaverage intellectual functioning (i.e., an IQ of approximately 70 or below, with an onset before age 18⁶) accompanied by significant limitations in adaptive functioning in at least two of the following areas: communication, self-care, home living, social/interpersonal skills, use of community resources, self-direction, functional academic skills, work, leisure, health, safety.⁷

5. Claimant has an organic brain dysfunction that is related to fetal alcohol syndrome. Although fetal alcohol syndrome can cause mental retardation, claimant is not mentally retarded; IQ testing done between the ages of 18 and 24 consistently produced scores well above the mentally retarded range. Fetal alcohol syndrome can also cause learning disabilities, and it appears this is the case here. Dr. Espy in 1981, Dr. Valdes in 1996, and Dr. Osborn in 2005 all concluded that claimant had a learning disability, and Dr. Osborn related this to fetal alcohol syndrome. But a learning disability is specifically excluded from consideration as a developmental disability. And, while claimant does have some limitations in areas of adaptive functioning, those limitations are due either to learning

³ Welfare and Institutions Code section 4512, subdivision (a).

⁴ California Code of Regulations, title 17, section 54000, subdivision (c)(2).

⁵ *Mason v. Office of Administrative Hearings (Inland Regional Center)* (2001) 89 Cal.App.4th 1119, 1130.

⁶ Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition, Text Revision, p. 49.

⁷ Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition, Text Revision, p. 49.

disabilities (primarily dyscalculia) or mental health issues; they are not the result of a qualifying developmental disability.

6. Claimant seeks from the service agency primarily case management and advocacy services. (It appears that the recommendations of Drs. Loewy and Froming are the basis of claimant's request.) While these are the sorts of services that are often provided to mentally retarded persons, and from which claimant would undoubtedly benefit, that fact alone is insufficient to find her eligible under the Lanterman Act. Because claimant fails to qualify for services under the fifth category, she is not entitled to receive regional center services.

ORDER

Claimant's appeal of the service agency's denial of eligibility for services under the Lanterman Act is denied. She is not eligible for regional center services.

DATED: _____

MICHAEL C. COHN
Administrative Law Judge
Office of Administrative Hearings

NOTICE

This is the final administrative decision; both parties are bound by this decision. Either party may appeal this decision to a court of competent jurisdiction within 90 days.